

# **EXHIBIT 43**

Page 1

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION  
---  
CHRISTOPHER CORCORAN, et )  
al., on behalf of )  
themselves and all others )  
similarly situated, )  
)  
Plaintiffs, )  
) CASE NO.  
vs. ) 15-CIV-03504-YGR  
) (CLASS ACTION)  
CVS PHARMACY, INC., )  
)  
Defendant. )  
\_\_\_\_\_)  
  
VIDEOTAPED DEPOSITION OF JOEL W. HAY, PhD,  
at Buckley Sandler, 100 Wilshire Boulevard,  
Suite 1000, Santa Monica, California,  
commencing at 8:03 a.m., on Friday, June 16,  
2017, before Marla Sharp, RPR, CLR, CCRR,  
CSR 11924.

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ALSO PRESENT:  
  
Kyle Loskamp, videographer

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2 EXAMINATION PAGE  
3 JOEL W. HAY, PhD  
4 BY MR. WATTS 6  
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8 Exhibit 335 Amended & Supplemented Expert Declaration of Professor Joel W. Hay, PhD (109 pages, not Bates stamped) 7  
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10 Exhibit 336 Addendum to Amended & Supplemented Expert Declaration of Professor Joel W. Hay, PhD (6 pages, not Bates stamped) 7  
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12 Exhibit 337 6-13-17 e-mail to Andrew Watts and others from Robert Gilmore (3 pages, not Bates stamped) 27  
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14 Exhibit 338 Active Plan Listing 11-3-08.xls (39 pages, Bates No. CVSC-0391316, confidential) 101  
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16 Exhibit 339 Chart (1 page, not Bates stamped) 108  
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18 Exhibit 340 7-21-11 New York Times article entitled "Express Scripts to Buy Medco for \$29 Billion" (3 pages, not Bates stamped) 112  
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20 Exhibit 341 Active Plans 05-01-09.xls (53 pages, Bates No. CVSC-0391336, confidential) 119  
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22 Exhibit 342 Active Plan Listing 10-1-09.xls (42 pages, Bates No. CVSC-0391321, confidential) 122  
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3 EXHIBITS  
4 EXHIBIT DESCRIPTION PAGE  
5 Exhibit 343 Active Plan Listing 12-1-09.xls (43 pages, Bates No. CVSC-0391324, confidential) 123  
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7 Exhibit 344 Active Plans 06-03-10.xls (47 pages, Bates No. CVSC-0391334) 124  
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9 Exhibit 345 Active Plan List 01-04-2010.xls (79 pages) 125  
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11 Exhibit 346 Active Plans 11-01-11.xlsx (34 pages, Bates No. CVSC-0391362, confidential) 126  
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13 Exhibit 347 10-27-16 letter to Robert Gilmore from Grant Geyerman (3 pages, not Bates stamped) 132  
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17 Exhibit 349 2-5-16 letter to Robert Gilmore from Grant Geyerman (4 pages, not Bates stamped) 133  
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23 Exhibit 425 Declaration of Susan Colbert in Support of Defendant's Opposition to Motion for Class Certification (8 pages, not Bates stamped) 105  
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1	MR. LEVINE: Objection as to form. 10:03:42	1	BY MR. WATTS: 10:05:39
2	THE WITNESS: Not for the purpose of 10:03:43	2	Q At a high level. 10:05:40
3	preparing this report -- 10:03:44	3	A Well, at a high level, I think there are 10:05:42
4	BY MR. WATTS: 10:03:45	4	reference prices. There are discounts and rebates. 10:05:49
5	Q Okay. 10:03:45	5	There may be volume-related conditions and price 10:05:58
6	A -- this declaration. 10:03:45	6	changes. And there may be a host of other issues 10:06:05
7	Q Are you -- I guess, as your experience in 10:03:48	7	going on, but, you know, there are lots of different 10:06:13
8	the industry or as a pharmaceutical economist, have 10:03:51	8	variables that go into it typically. 10:06:17
9	you reviewed -- ever had the opportunity to review a 10:03:56	9	Q Okay. Are you familiar with pass-through 10:06:21
10	contract between a third-party payer and a PBM? 10:03:59	10	pricing between a PBM and third-party? 10:06:25
11	MR. LEVINE: Objection as to form. 10:04:03	11	A I've heard that term. 10:06:31
12	THE WITNESS: Yeah. And I've looked at 10:04:04	12	Q Do you have an understanding as to -- as a 10:06:33
13	many in this case. 10:04:05	13	pharmaceutical economist, as to what that term means 10:06:34
14	BY MR. WATTS: 10:04:07	14	or that pricing arrangement means? 10:06:37
15	Q You've looked at contracts between PBMs and 10:04:07	15	A Well, one type of pass-through pricing 10:06:42
16	third-party payers in this case? 10:04:10	16	would be that, you know, "We will give you a 10:06:45
17	A Well, maybe not -- maybe not PBMs and 10:04:21	17	reference price like AWP or WAC minus X as the 10:06:52
18	third-party payers. I've certainly looked at PBM 10:04:28	18	price." 10:06:59
19	contracts with Caremark -- I mean, with CVS. 10:04:30	19	Q Okay. And there are -- I think, as you 10:07:01
20	Q You've looked at PBM-to-CVS contracts? 10:04:33	20	said, there are variations in how a pass-through 10:07:03
21	A Yes. 10:04:36	21	price can be set up in a contract between a 10:07:05
22	Q Okay. I understand that. But I'm asking 10:04:37	22	third-party payer and a PBM? 10:07:09
23	about PBM-to-third-party payer contracts. 10:04:40	23	A Absolutely. I think there are lots of 10:07:11
24	Have you looked at any of those in this 10:04:43	24	variations. 10:07:13
25	case? 10:04:44	25	Q Okay. Are -- have you -- are you familiar 10:07:13
Page 78		Page 80	
1	A Not that I can recall in this case. 10:04:46	1	with performance guarantees in PBM-to-third-party 10:07:15
2	Q Okay. But you've looked at them in your 10:04:48	2	contracts? 10:07:18
3	experience as a pharmaceutical economist? You're 10:04:49	3	MR. LEVINE: Objection as to form. 10:07:20
4	familiar with those contracts? 10:04:51	4	THE WITNESS: Generally, yes. 10:07:21
5	MR. LEVINE: Objection as to form. 10:04:53	5	BY MR. WATTS: 10:07:22
6	THE WITNESS: Yes. I recall having looked 10:04:55	6	Q And what's your general understanding of a 10:07:22
7	at some of them. 10:04:56	7	performance guarantee? 10:07:24
8	BY MR. WATTS: 10:04:57	8	A Well, one type of performance guarantee 10:07:27
9	Q Are you familiar with the pricing terms in 10:04:57	9	would be that "We will keep your drug spend at or 10:07:29
10	those contracts at a general level? 10:05:03	10	below last year's level. And then if we deviate 10:07:35
11	MR. LEVINE: Objection as to form. 10:05:06	11	from that target, there may be either rewards or 10:07:44
12	THE WITNESS: I don't understand the 10:05:11	12	penalties based on the amount of deviation." 10:07:47
13	question. 10:05:11	13	Q Okay. Can you think of any other, I guess, 10:07:49
14	BY MR. WATTS: 10:05:12	14	just general examples or different variations in the 10:07:52
15	Q Well, are you familiar with the different 10:05:12	15	pricing arrangements that you're familiar with 10:07:55
16	reimbursement or financial arrangements to -- 10:05:15	16	between third-party payers and PBMs? 10:07:58
17	between a PBM and a third-party payer? 10:05:19	17	MR. LEVINE: Objection as to form. 10:08:00
18	MR. LEVINE: Objection as to form. 10:05:24	18	THE WITNESS: Sure. I mean, there could be 10:08:01
19	THE WITNESS: I'm generally aware that 10:05:25	19	all kinds of variations, including value-based 10:08:02
20	there's a lot of variation. 10:05:27	20	incentive programs so that there may be additional 10:08:06
21	BY MR. WATTS: 10:05:29	21	penalties or rewards based on adherence to certain 10:08:12
22	Q Well, can you give me, I guess, your 10:05:29	22	types of medication. I mean, there's lots of 10:08:18
23	understanding of the different variations in pricing 10:05:31	23	different things that are out there in terms of 10:08:23
24	in a PBM-to-third-party contract? 10:05:35	24	benefit design. 10:08:26
25	MR. LEVINE: Objection as to form. 10:05:39	25	///

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1 identified in the active plan lists who adjudicated 12:03:21  
 2 Condor codes 15800 and 7434? 12:03:24  
 3 MR. LEVINE: Objection as to form. 12:03:28  
 4 THE WITNESS: Nothing specific. Nothing 12:03:31  
 5 other than I've already discussed. 12:03:32  
 6 MR. WATTS: No further questions. 12:03:37  
 7 MR. LEVINE: All right. Thank you. 12:03:39  
 8 THE VIDEOGRAPHER: This concludes today's 12:03:42  
 9 deposition of Dr. Joel W. Hay, volume 3. The time 12:03:43  
 10 is 12:03 p.m. We are off the record. 12:03:48  
 11 ---  
 12 (Deposition adjourned at 12:03 p.m.)  
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1 I, JOEL W. HAY, PhD, having appeared for my  
 2 deposition on June 16, 2017, hereby certify under  
 3 penalty of perjury under the laws of the United  
 4 States of America that the foregoing is true and  
 5 correct.  
 6 Executed name on \_\_\_\_\_,  
 7 201\_\_\_\_, at \_\_\_\_\_,  
 8 (city) (state)  
 9  
 10  
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 12  
 13 JOEL W. HAY, PhD  
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1 DEPONENT'S CHANGES OR CORRECTIONS  
 2 Note: If you are adding to your testimony, print  
 the exact words you want to add. If you are  
 3 deleting from your testimony, print the exact words  
 you want to delete. Specify with "Add" or "Delete"  
 4 and sign this form.  
 5  
 6 DEPONENT: JOEL W. HAY, PhD  
 7 CASE: CHRISTOPHER CORCORAN, ET AL. vs.  
 8 CVS PHARMACY, INC.  
 9 DEPOSITION DATE: JUNE 16, 2017  
 10 PAGE LINE CHANGE/ADD/DELETE  
 11 \_\_\_\_\_  
 12 \_\_\_\_\_  
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 25 Deponent's Signature \_\_\_\_\_ Date \_\_\_\_\_

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1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER  
 2  
 3 I, Marla Sharp, certified shorthand  
 4 reporter in the State of California, hereby certify:  
 5 That the foregoing deposition of  
 6 JOEL W. HAY, PhD, was taken before me on June 16,  
 7 2017, at the time therein set forth, at which time  
 8 the witness was duly sworn by me;  
 9 That the testimony of the witness and all  
 10 colloquy and objections made at the time of the  
 11 deposition were recorded stenographically by me and  
 12 thereafter transcribed, said transcript being a true  
 13 copy of my shorthand notes thereof;  
 14 That review of the transcript was neither  
 15 requested nor waived before completion of the  
 16 deposition; ( ) that the witness has failed or  
 17 refused to approve the transcript.  
 18 I further certify I am neither financially  
 19 interested in the action nor a relative or employee  
 20 of any attorney of any of the parties.  
 21 In witness whereof, I have subscribed my  
 22 name and signature this date, Sunday, June 18, 2017.  
 23  
 24 \_\_\_\_\_  
 25 Marla Sharp  
 RPR, CLR, CCRR, CSR 11924

35 (Pages 137 to 140)